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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1685 of 2001

- Petitioners
1. Naval Kishore Mishra, son of Nageshwar Mishra, aged about 38 years, Occupation - General Mazdoor.
 2. Bhupat Nath Prasad, Son of Ram Dular Soni, aged about 36 years, Occupation - General Mazdoor.

Both of them are posted at Charcha West Colliery, S.E.C.L. District-Surguja (C.G.)

Versus

- Respondents
1. Chairman-cum-Managing Director, S.E.C.L. Seepath Road, Bilaspur (C.G.)
 2. Sub Area Manager, Charcha West, S.E.C.L. District- Surguja (C.G.).
 3. Chief General Manager, S.E.C.L. Baikunthpur.
 4. Regional Karmik Manager, Baikunthpur Area.

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri.**

Petitioners by Shri D. N. Prajapati, Advocate.

Respondents by Shri H. B. Agarwal, Senior Advocate with Shri Pankaj Agarwal, Advocate.

ORAL ORDER

(3rd January, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioners were appointed vide order dated 22.10.1995 (Annexure P/1 and P/2) as General Mazdoor Catetory-1 in Charcha West Colliery, under Baikunthpur Area of South Eastern Coal Fields Ltd. subject to the terms of appointment that services of the petitioners may be terminable at any time, if it is found that the petitioners have obtained appointments on the basis of false certificates of educational qualifications, residence, caste etc. The petitioners have given verification also that the services of the

petitioners may be terminated in case the petitioners had submitted any false information.

2. The petitioners joined their services and continued as General Mazdoor Category-1 till their services were terminated vide order dated 22/23.10.1997 (Annexure P/3) on the ground that I.T.I. examination certificates produced by the petitioners were not genuine. Admittedly the petitioners were not given show cause notice before impugned termination order dated 22/23.10.1997 was passed. It is well settled principle of law that even in order to come to the conclusion that the certificates were false and were not genuine there should be an enquiry and the employee cannot be condemned without affording him an opportunity of hearing to present his case.
3. In the present case the principle of audi alteram partem (hear the other side) has not been complied with to come to the conclusion that the I.T.I. certificates produced by the petitioners were not genuine.
4. In **Basudeo Tiwary V. Sido Kanhu University and others** AIR 1998 S.C. 3261 the Supreme Court has held as under:-

"12. The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, Statutes, Rules or Regulations or in any irregular or unauthorized manner. The condition precedent for exercise of this power is that an appointment had been made contrary to Act, Rules, Statutes and Regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, Statutes, Rules or Regulations etc. a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry notice will have to be held and in holding such an enquiry the person whose

appointment is under enquiry will have to be issued to him. If notice is not given to him then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in D.T.C. Mazdoor Sabha's case (AIR 1991 SC 101). In such an event, we have to hold that in the provision there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, Statute, Rule or Regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how S. 35(3) in this case will have to be read."

5. In view of the above decision of the Supreme Court and the facts of the case, the impugned order Annexure P/3 deserves to be quashed. The Respondents are free to hold an enquiry and pass appropriate order and to take such other action as is permissible under the terms and conditions of appointment.
6. The petitioners have not established that they were not employed anywhere gainfully therefore in the peculiar facts and circumstances of the case, where the petitioners were terminated and the petition has been allowed on technical ground of no show cause notice, not on merit, the petitioners are entitled to 30% of the back wages.
7. For the reasons stated above the petition is allowed. No order as to costs.

Certified copy, as per Rules.

Sd/-
Satish K. Agnihotri
Judge